IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4961 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGAWATSINGH L. ZALA

Versus

UNION OF INDIA

Appearance:

MRS SANGITA PAHWA for Petitioner

MR DK NAKRANI FOR MR SS SHAH for Respondent No. 1, 2, 3, 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 12/01/2001

ORAL JUDGEMENT

#. The petitioner was employed as Constable in the Railway Protection Force, Western Railway represented by the respondent Union of India. He was charge-sheeted on allegation of misconduct that he deserted his duties

while posted in Sub-Inspector's Office at Jamnagar and left the Office unattended. The defence of the petitioner was that he suddenly developed severe pain in stomach which made him feel unconscious and with the help of another co-employee he was rushed to hospital. This was the compelling circumstance under which he had to leave the Office. The Enquiry Officer on holding enquiry came to the conclusion by his report dated 9-9-1988 that the defence version of the petitioner is nothing but an after thought and concoction which is not corroborated by his earliest version which he got recorded in Hindi. On the basis of the report of the Enquiry Officer, the Disciplinary Authority imposed on him punishment of removing him from service. An order to that effect was passed on 30-5-1989. The petitioner then preferred an Appeal under Service Regulations to the Appellate Authority. The Appellate Authority confirmed the finding of the Disciplinary Authority regarding misconduct committed by the petitioner, but keeping in consideration his long service, the punishment of removal was reduced to compulsory retirement. The petitioner amended the petition to state that a Revision Petition was also preferred and the same was rejected on 27-9-1990.

#. Learned counsel appearing for the petitioner in this petition under Article 226 of the Constitution of India assails the orders passed in the disciplinary proceedings firstly on the ground that the petitioner has been found guilty without any reliable evidence on record. It is argued that there was no justification to reject the version of the petitioner that he suddenly fell ill seriously and had to be shifted to the hospital. It is in those compelling circumstances that he had to leave the place of duty. It is stated that he had examined witnesses including a co-employee, who had escorted him to the hospital. He has also produced medical evidence of the doctor who treated him in the Railway Hospital. Reference is made to the Standing Rule concerning the requirement of the Railway servant to report his sickness within 48 hours after submitting himself to the medical treatment in the Hospital.

#. Learned counsel appearing for the petitioner took me through the contents of the report of the Enquiry Officer and made an attempt to submit that the conclusion reached against the petitioner was unwarranted.

#. I am mindful of the fact that in the proceedings under Article 226 of the Constitution the Court is not expected to reappreciate the evidence led in the disciplinary proceedings and come to its own conclusion.

The petitioner tried to set up defence of having fallen seriously sick and that his physical condition was such that he could not even intimate about it to any superior member of staff for making alternative arrangement for the office. The Enquiry Officer and the Disciplinary Authority have appreciated the defence version sought to be proved by the petitioner. In my opinion, they correctly gave due importance to the fact that in the earliest version of the petitioner recorded, there was no mention of his having fallen so seriously sick as to become unconscious and regained consciousness in the hospital. The Enquiry Officer came to the conclusion that after receipt of the charge-sheet, a false plea has been raised and sought to be proved by false witnesses. Learned counsel contends that there is no reason to disbelieve the certificate of the doctor and the medical papers of the Railway Hospital. I need not go into the question of the fact of illness of the petitioner and treatment that he had received in the Railway Hospital. The reason for holding the petitioner guilty of misconduct of deserting duty and negligently leaving Office unattended is that the petitioner was not found to have fallen so seriously sick as to be compelled to suddenly desert the place of his duty. The Appellate Authority rightly observed that the petitioner is Member of a Force and standard of conduct expected of him is stricter than an employee in any other civil post. It also cannot be lost sight of that leaving the Office unattended was likely to create several difficulties and hazards to the working of the Office and the safety of records and documents placed therein.

#. After hearing the learned counsel for the petitioner, I find no scope for taking a different view of the evidence than what has been taken by the Disciplinary Authority. The Appellate Authority has already reduced the punishment imposed on the petitioner from removal to compulsory retirement. It is not the case where there is no evidence to sustain the charges. Decision of learned Single Judge in Special Civil Application No. 4058 of 1993 in the case of Amarsingh R. Vs. Union of India decided on 21/22-04-1999 has been relied, but, it is not on similar facts, hence is distinguishable.

I find no merit in this petition. It is accordingly dismissed. Rule is discharged.

However, in the facts and circumstances of the case, there shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

[sndevu]